

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 22<sup>nd</sup> day of April, two thousand fifteen.

PRESENT:

DENNIS JACOBS,  
DEBRA ANN LIVINGSTON,  
SUSAN L. CARNEY,  
*Circuit Judges.*

ALIEU JALLOH,  
*Petitioner,*

v.

13-682  
NAC

ERIC H. HOLDER, JR., UNITED STATES  
ATTORNEY GENERAL,  
*Respondent.*

FOR PETITIONER: Amy Nussbaum Gell, Gell & Gell, New York, NY.

FOR RESPONDENT: Stuart F. Delery, Assistant Attorney General; Douglas E. Ginsburg, Assistant Director; Andrew B. Insenga, Trial Attorney, Office of

Immigration Litigation, United  
States Department of Justice,  
Washington, D.C.

UPON DUE CONSIDERATION of this petition for review of a Board of Immigration Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the petition for review is DENIED.

Petitioner Alieu Jalloh, an alleged native and citizen of Sierra Leone, seeks review of a January 29, 2013 order of the BIA, affirming the September 29, 2010 decision of an Immigration Judge ("IJ"), which denied asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). *In re Alieu Jalloh*, No. A078 736 544 (B.I.A. Jan. 29, 2013), *aff'g* No. A078 736 544 (Immig. Ct. New York City Sep. 29, 2010). We assume the parties' familiarity with the underlying facts and procedural history in this case.

Under the circumstances of this case, we have reviewed the IJ's decision as modified by the BIA. See *Xue Hong Yang v. U.S. Dep't of Justice*, 426 F.3d 520, 522 (2d Cir. 2005). The applicable standards of review are well established. See 8 U.S.C. § 1252(b)(4)(B); *Yanqin Weng v. Holder*, 562 F.3d 510, 513 (2d Cir. 2009); *Secaída-Rosales v. INS*, 331 F.3d 297, 307 (2d Cir. 2003), overruled with respect to REAL

1 *ID Act cases by Xiu Xia Lin v. Mukasey*, 534 F.3d 162 (2d  
2 Cir. 2008).

3 Because Jalloh filed his application in 2000, the REAL  
4 ID Act does not apply in this case. See REAL ID Act of  
5 2005, Div. B of Pub. L. No. 109-13, 119 Stat. 302, 303  
6 (2005) (codified at 8 U.S.C. § 1158(b)(1)(B)(iii)); *Matter*  
7 *of S-B-*, 24 I. & N. Dec. 42, 45 (B.I.A. 2006). In pre-REAL  
8 ID Act cases, an adverse credibility determination must be  
9 based on "specific, cogent reasons" that "bear a legitimate  
10 nexus" to the finding, and any discrepancy must be  
11 "substantial" when measured against the record as a whole.  
12 See *Secaida-Rosales*, 331 F.3d at 307. The agency does not  
13 err in basing an adverse credibility determination on the  
14 submission of fraudulent identity documents. See *Borovikova*  
15 *v. U.S. Dep't of Justice*, 435 F.3d 151, 157-58 (2d Cir.  
16 2006); *Siewe v. Gonzales*, 480 F.3d 160, 170 (2d Cir. 2007).

17 It may be that the IJ should have explicitly found that  
18 he knew that his passport and ID card were fraudulent, but  
19 Jalloh failed to exhaust this challenge on appeal before the  
20 BIA. Instead he argued to the BIA that the IJ ignored  
21 evidence that the documents were valid. The statute  
22 requires that petitioners exhaust each category of relief

1 they seek. 8 U.S.C. § 1252(d)(1); *Karaj v. Gonzales*, 462  
2 F.3d 113, 119 (2d Cir. 2006). Petitioners must raise  
3 specific issues with the BIA before raising them here. See  
4 *Foster v. INS*, 376 F.3d 75, 77-78 (2d Cir. 2004). Issue  
5 exhaustion is mandatory: "If[, as here,] the government  
6 points out to the appeals court that an issue relied on  
7 before that court by a petitioner was not properly raised  
8 below, the court must decline to consider that issue, except  
9 in [] extraordinary situations." *Lin Zhong v. U.S. Dep't of*  
10 *Justice*, 480 F.3d 104, 107 n.1 (2d Cir. 2007).

11 We decline to consider Jalloh's unexhausted challenge  
12 to the IJ's failure to explicitly find that he knew his  
13 passport and ID card were fake. As a result, Jalloh is  
14 unable to rely on any such defect in the credibility  
15 determination. See *Borovikova*, 435 F.3d at 157-58  
16 (explaining that the fraudulent document alone could support  
17 an adverse credibility determination); *Siewe*, 480 F.3d at  
18 170.

19 The adverse credibility determination was further  
20 supported by findings that Jalloh's testimony about where he  
21 lived in Sierra Leone was "exceptionally vague" and that his  
22 lack of knowledge about post-war events in Sierra Leone was

1 implausible. He does not challenge those findings. See  
2 *Yueqing Zhang v. Gonzales*, 426 F.3d 540, 542 n.1 (2d Cir.  
3 2005) (“Issues not sufficiently argued in the briefs are  
4 considered waived and normally will not be addressed on  
5 appeal.” (quoting *Norton v. Sam’s Club*, 145 F.3d 114, 117  
6 (2d Cir. 1998))).

7 We conclude that the adverse credibility determination  
8 is properly based on “specific, cogent reasons” that “bear a  
9 legitimate nexus” to the finding. *Secaida-Rosales*, 331 F.3d  
10 at 307. The credibility determination is dispositive of his  
11 claims for asylum, withholding of removal, and CAT relief,  
12 as all claims share the same factual predicate. See *Paul v.*  
13 *Gonzales*, 444 F.3d 148, 156 (2d Cir. 2006); *Xue Hong Yang*,  
14 426 F.3d at 523.

15 Lastly, Jalloh contends that the agency failed to  
16 properly weigh all of the evidence. The contention is  
17 misplaced because the weight accorded to evidence lies  
18 largely within the discretion of the agency. See *Xiao Ji*  
19 *Chen v. US Dep’t of Justice*, 471 F.3d 315, 342 (2d Cir.  
20 2006). Moreover, the agency explicitly referenced the  
21 evidence on the record, observed that it had no way of  
22 ascertaining the identity of anyone abroad who was  
23 proffering the evidence, and found that the evidence did not

1     rebut the findings of the Forensic Document Laboratory  
2     report regarding the fraudulent passport and ID card. The  
3     record therefore does not suggest that any evidence was  
4     ignored. *Id.* at 337 n.17 (presuming that the agency "has  
5     taken into account all of the evidence before [it], unless  
6     the record compellingly suggests otherwise").

7             For the foregoing reasons, the petition for review is  
8     DENIED. As we have completed our review, any stay of  
9     removal that the Court previously granted in this petition  
10    is VACATED, and any pending motion for a stay of removal in  
11    this petition is DISMISSED as moot. Any pending request for  
12    oral argument in this petition is DENIED in accordance with  
13    Federal Rule of Appellate Procedure 34(a)(2), and Second  
14    Circuit Local Rule 34.1(b).

15                             FOR THE COURT:  
16                             Catherine O'Hagan Wolfe, Clerk  
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